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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Wi-LAN INC.,

Case No.: 10 CV 80254 JF (PSG)

Plaintiff,

V.

LG ELECTRONICS, INC. and LG
ELECTRONICS U.S.A., INC.,

**DECLARATION OF JAMES J.
LUKAS, JR. IN SUPPORT OF LG
ELECTRONICS INC.'S AND LG
ELECTRONICS U.S.A.
RENEWED MOTION FOR
SANCTIONS ON SHORTENED
TIME**

Date: May 24, 2011
Time: 10:00 a.m.
Before: Mag. Judge Paul S. Grewal
Place: Courtroom 5 - 4th Floor

I, James J. Lukas, Jr., hereby declare:

1. I am an attorney duly licensed to practice law in the State of Illinois, and an associate with the law firm of Greenberg Traurig, LLP, attorneys of record

1 for Defendants LG Electronics, Inc. and LG Electronics U.S.A., Inc. (“LG”) in the
2 matter of *Wi-LAN, Inc. v. LG Electronics, Inc. and LG Electronics U.S.A. Inc.*, No.
3 10 CV 80254, in the U.S. District Court for the Northern District of California, San
4 Jose Division, in which this declaration is being submitted pursuant to Local Rule
5 7-5. I respectfully submit this affidavit in accordance with Civil Local Rule 37-
6 4(b) in support of LG’s Renewed Motion For Sanctions on Shortened Time.

7 2. I have personal knowledge of the factual assertions I make herein
8 and/or support those assertions with the Exhibits attached hereto.

9 3. This affidavit is submitted to provide the Court with the relevant facts
10 and circumstances that support LG's Renewed Motion For Sanctions on Shortened
11 Time; describe the efforts made by LG to secure compliance without intervention
12 by the Court; itemize with particularity the otherwise unnecessary costs and
13 expenses, including attorney fees, directly caused by Kilpatrick Townsend &
14 Stockton LLP's ("Townsend") violation; and set forth an appropriate justification
15 for LG's attorney-fee hourly rates.

16 | A. Relevant Background

17 4. On September 20, 2010, LG served a subpoena (the “Subpoena”) on
18 Townsend requesting documents and deposition testimony relating to the subject
19 matter of the Townsend Opinion.

1 5. On October 26, 2010, Townsend moved to quash the Subpoena. (Dkt.
2 No. 1.)

3 6. On February 8, 2011, the Court denied Townsend's motion to quash
4 and ordered Townsend to comply with the Subpoena. In its Order, the Court
5 directed Townsend to produce "all communications and work product related to
6 the subject matter covered by the Townsend letter," with a limited exception for
7 "opinion work product." (Dkt. No. 22.)

8 7. After the Court's ruling, I wrote to Townsend on February 10, 2011,
9 asking it to provide a date for production of documents and a privilege log, as well
10 as dates of availability for deposition—all in compliance with the Court's Order.
11 Townsend did not respond. I sent another request on February 15, 2011, repeating
12 its request that Townsend provide dates for compliance with the Court's Order.

13 8. On February 16, 2011, Townsend answered that it would "expect to
14 provide a witness in Washington D.C. on February 23 or 24. Townsend's
15 February 16, 2011, correspondence did provide a date by which it would produce
16 its document production or privilege log to LG.

17 9. On February 16, 2011, I tentatively agreed to the deposition dates on
18 the condition that Townsend's documents and privilege log were produced by
19 Friday, February 18, 2011—a mere four days before the first suggested deposition
20 date.

1 10. On February 18, 2011, having not received a single document from
2 Townsend, I reminded Townsend that its production and privilege log were due by
3 the close of business as a condition for taking Townsend's deposition on February
4 23, 2011.

5 11. On February 18, 2011, Townsend responded that it planned on
6 producing "a relatively small volume of documents," by Saturday, February 19,
7 2011. Townsend also stated that it would not be producing a privilege log as
8 required by FED. R. CIV. P. 26.

9 12. I immediately objected to Townsend's late and unduly limited
10 production as well as Townsend's refusal to submit a privilege log. In addition, I
11 reminded Townsend of the scope of the production required pursuant to the
12 Court's Order.

13 13. On Saturday, February 19, 2011, Townsend produced approximately
14 589 pages of documents. However, it quickly became apparent that the production
15 was woefully deficient and Townsend was taking an improperly narrow view of
16 the scope of materials covered by the Court's Order. LG's review of Townsend's
17 document production revealed that Townsend withheld many documents identified
18 on Wi-LAN's (not Townsend's) privilege log that this Court had ordered it to
19 produce. The documents Townsend did produce were duplicative of each other
20 and contained improper redactions.

1 14. In light of these deficiencies, I sent an email later that afternoon of
2 February 19, 2011, indicating that Townsend's production was incomplete and
3 requesting that it supplement its production to comply with the Court's Order by
4 5:00pm, Sunday, February 20, 2011. I advised Townsend that if Townsend failed
5 to so comply, LG would need to postpone the deposition scheduled for February
6 23, 2011 and seek the Court's intervention. Moreover, I included an abridged
7 version of Wi-LAN's privilege log in the New York case identifying each
8 document that, at a minimum, LG expected to be included in Townsend's
9 production—the abridged privilege log included communications between Wi-
10 LAN and Townsend.

11 15. On February 21, 2011, Townsend responded, admitting that the Court
12 had ruled that "there was a waiver of attorney client privilege as to the subject
13 matter of the Opinion letter," but refused to produce any supplemental documents.

14 16. On February 22, 2011, Townsend filed its Motion for Relief From
15 Nondispositive Pretrial Order of Magistrate Judge with Judge Fogel. (Dkt. No.
16 24.)

17 17. On February 23, 2011, LG submitted its Motion for Rule to Show
18 Cause and Other Sanctions Against Townsend and Townsend and Crew. (Dkt. No.
19 25.)

20

1 18. On March 8, 2011, Judge Fogel denied Townsend's objection,
 2 holding that "Judge Grewal properly rejected Townsend's contention that subject-
 3 matter waiver extends only to 'information considered, reviewed, relied upon or
 4 created in preparation of the Townsend opinion and to information communicated
 5 to third parties' ... [and] this Court concludes that Judge Grewal's order is
 6 sufficiently detailed to permit the affected parties to understand the scope of the
 7 waiver." (Dkt. No. 33.)

8 19. On April 7, 2011, Magistrate Judge Grewal granted LG's Motion for
 9 Rule to Show Cause and Other Sanctions, holding that the Subpoena covered the
 10 full scope of the waiver previously articulated by the Court and once again
 11 ordering that Townsend produce all documents relating to the patent infringement
 12 and fraud subject matters of the Townsend Opinion. The Court further held that it
 13 would "entertain a renewed sanctions motion - on shortened time - if Kilpatrick
 14 Townsend fails to comply with this order." The Court ordered Townsend to
 15 comply with its Order by April 15, 2011. (Dkt. No. 41.)

16 20. On April 12, 2011, Townsend filed a second Motion for Relief from
 17 Nondispositive Pretrial Order of Magistrate Judge with Judge Fogel. (Dkt. No.
 18 42.)

19 21. On April 26, 2011, Judge Fogel once again denied Townsend's
 20 objection to Magistrate Judge Grewal's Order. (Dkt. No. 45.)

1 22. The next day, April 27, 2011, I notified Townsend that it remained in
 2 contempt of this Court's Order and requested confirmation that Townsend intended
 3 to comply with the Court's Order by the close of business on April 28, 2011. (*See*
 4 **Exhibit 1**, a true and correct copy of an Email Chain from M. Holohan to J. Lukas,
 5 dated April 27–28, 2011.)

6 23. On April 28, 2011, Townsend responded to me, confirming that it
 7 “will not provide any further discovery in response to LG’s subpoena until a
 8 decision has been reached concerning appeal.” (*See Ex. 1.*)

9 **B. Costs, Expenses, and Legal Fees Arising from Townsend’s Continued**
 10 **Contempt**

11 1. LG requests the following reasonable fees and costs associated with
 12 seeking to address Townsend’s production of documents and a witness for
 13 deposition in compliance with the Court’s February 8, 2011 Order (Dkt. No. 22)
 14 and Judge Fogel’s denial of Townsend’s objection (Dkt. No. 33)¹:

15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]

19

 20 ¹ LG has not yet been billed for April 2011 attorneys’ fees and costs. Counsel for LG has
 21 estimated such fees and costs for the purposes of this Renewed Motion for Sanctions on
 22 Shortened Time. Should the Court so desire, counsel for LG will submit an updated fee
 petition once the April 2011 bill has issued.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 2. LG requests the following reasonable fees and costs associated with
10 preparing, drafting, filing, and arguing LG's Motion for Rule to Show Cause and
11 for Sanctions and the hearing on LG's Motion for Rule to Show Cause and for
12 Sanctions:

13 a. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

i.

j:

k. Airfare for James J. Lukas, Jr. (appear before Judge Peck, S.D.N.Y. on 4/4/11, and Judge Grewal, N.D. Cal. on 4/5/11); \$1,611.36.

1. Hotel for James J. Lukas, Jr. (appear before Judge Grewal, N.D. Cal. on 4/5/11): \$180.

m.

3. LG requests the following reasonable fees and costs associated with
ing to address Townsend's production of documents and a witness for
ition in compliance with the Court's April 7, 2011 Order (Dkt. No. 41) and
Fogel's denial of Townsend's objection (Dkt. No. 45):

a.

ANSWER The answer is (A). The first two digits of the number 1234567890 are 12.

 [REDACTED]

ANSWER **ANSWER** **ANSWER** **ANSWER** **ANSWER**

I [REDACTED]

[REDACTED]

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i. Legal Research: \$1,543.39.

j.

4. LG requests the following reasonable fees and costs associated with seeking to address Townsend's noncompliance in the Pending Litigation, including the drafting of letters and Court conferences:

a.

1

1

1

1

1

Legal Research: \$489.17.

i. Airfare for Richard D. Harris (appear before Judge Peck, S.D.N.Y. on 4/4/11): \$448.20.

J. Hotel for Richard D. Harris and J. Lukas (appear before Judge
Judge Peck, S.D.N.Y. on 4/4/11): \$530.

k. Subtotal:

5. LG requests all reasonable fees and costs associated with preparing, drafting, and filing this Renewed Motion for Sanctions and any hearing or additional briefing related thereto.²

6. The above amounts total as follows:

a. Townsend's production of documents and a witness for deposition in compliance with the Court's February 8, 2011 Order (Dkt. No. 22) and Judge Fogel's denial of Townsend's objection (Dkt. No. 33): [REDACTED]

b. Preparing, drafting, filing, and arguing LG's Motion for Rule to Show Cause and for Sanctions and the hearing on LG's Motion for Rule to Show Cause and for Sanctions: [REDACTED]

c. Seeking to address Townsend's production of documents and a witness for deposition in compliance with the Court's April 7, 2011 Order (Dkt. No. 41) and Judge Fogel's denial of Townsend's objection (Dkt. No. 45): [REDACTED]

d. Seeking to address Townsend's noncompliance in the Pending Litigation, including the drafting of letters and Court conferences: [REDACTED]

² Should the Court so desire, counsel for LG will submit an updated fee petition once such fees and costs are ascertained.

1 e. Preparing, drafting, and filing this Renewed Motion for
2 Sanctions and any hearing or additional briefing related thereto:
3 **TBD.**

4 **TOTAL:** [REDACTED]

5 7. The hourly rate and hours billed to LG for each respective period and
6 for each attorney are reasonable for the level of experience of each attorney in the
7 specialized area of patent litigation in which many attorneys have advanced
8 technical backgrounds and are members of the patent bar. All reasonable hours
9 billed were productive for LG and there was no redundancy in attorney staffing.
10 As discussed above in greater detail, Greenberg Traurig, on behalf of LG, was
11 required to file two motions for sanctions and a reply in support of one of those
12 motions and to respond to objections to Magistrate Judge Grewal's rulings along
13 with a request for a stay. In addition, reasonable hours were spent researching
14 issues relating to the briefing before this Court and preparing for hearings. Finally,
15 reasonable hours were spent trying to get Townsend to comply with the Court's
16 Orders without further intervention of the Court.

17 The hourly billing rates of each attorney are commensurate with their years
18 of experience and prevailing market rates for patent litigators in the Northern
19 District of California with comparable skill, experience, and reputation who work
20 for large, international law firms such as Greenberg Traurig, LLP. (*See Matlink,*

1 *Inc. v. Home Depot U.S.A., Inc.*, Case No. 07cv1994-DMS (BLM), slip op. at 7-8
2 (S.D.Cal. Oct. 27, 2008).) For example, Mr. Harris, an experienced trial attorney
3 with over thirty-five years of patent litigation and patent prosecution experience, is
4 a partner and Co-chair of Greenberg Traurig's Patent Litigation practice. Mr.
5 Mote is a partner with over fourteen years of patent litigation experience. Mr.
6 Lukas is a senior associate with over nine years of patent litigation experience.
7 Mr. Maiers is an associate with over five years of patent litigation and patent
8 prosecution experience. Messrs. Harris, Mote, Lukas, and Maiers are registered
9 patent attorneys with the United States Patent and Trademark Office. Each of
10 them has extensive experience with complex patent litigation cases in federal
11 district courts throughout the country. Mr. Perez is an associate with Greenberg
12 Traurig's Silicon Valley office with over five years of patent litigation experience.
13 Mr. Levinstein and Ms. Wan are both junior associates.

14 I declare under penalty of perjury under the laws of the State of California
15 that the foregoing is true and correct, and that this declaration was executed on
16 May 10, 2011, at Chicago, Illinois.

17 Dated: May 10, 2011

/s/ James J. Lukas, Jr.

James J. Lukas, Jr.

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Attorneys for LG Electronics, Inc. and
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